

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NANCY GUCWA
and MARK MARUSZA,

Case No. 2:15-cv-10815-AJT-APP
Hon. Arthur J. Tarnow

Plaintiffs,

vs.

DR. JEFFREY LAWLEY,
DR. HARVEY AGER,
DR. W. JOHN BAKER,
DR. BARRY RUBIN and
ACCIDENT FUND INSURANCE
COMPANY OF AMERICA,

Defendants.

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**PLAINTIFFS' EX PARTE (1) MOTION TO
STRIKE COMPLAINT AND BRIEF, AND
(2) MOTION FOR LEAVE TO FILE THE
FIRST AMENDED COMPLAINT AND BRIEF**

(1) Motion to Strike Complaint, and Brief

Plaintiffs bring this motion seeking an order striking the Complaint, Document 1, as it was filed in error by counsel's secretary (see Exhibit 1, Affidavit and Statement), and substituting for it the First Amended Complaint (Docket #2), which was filed March 6, 2015. Plaintiffs bring this motion because plaintiffs' counsel's secretary inadvertently filed on March 5, 2015, an early draft of the complaint rather than the intended complaint.

The parties plaintiff and defendant differ between the Complaint and the First Amended Complaint. Also, the parties listed on the Civil Cover Sheet and Docket Sheet do not match the parties on the Complaint. The Civil Cover Sheet and Docket Sheet correctly listed the plaintiffs (Nancy Gucwa and Mark Marusza) and defendants (Drs. Lawley, Baker, Ager and Rubin, and Accident Fund Ins. Co.) but the Complaint listed Gucwa, Marusza, and Perez as plaintiffs, and only Ager, Baker and Accident Fund as defendants.

This motion is brought pursuant to ECF Electronic Filing Policies and Procedures R14, CORRECTING DOCKET ENTRIES INCLUDED PAPERS FILED IN ERROR (“If a paper is filed in error, the filing user must seek appropriate relief from the Court”), and LR 7.1.

On or about 8:30 am on March 6, the court clerk was advised by plaintiffs’ counsel’s office that the wrong document was filed. In response, the clerk placed a “Notice of Error” on the docket sheet and acted so that no summonses would be issued; the clerk advised plaintiff’s counsel to file a First Amended Complaint without a new filing fee and file a motion to strike the Complaint as having been filed in error.

The clerk also said that upon the filing of the First Amended Complaint, which was done March 6 is now Docket #2, summonses would promptly be issued; when received, these summonses will promptly be served upon defendants with the First Amended Complaint.

(2) Motion for Leave to File First Amended
Complaint and Brief

If required, plaintiffs seek leave to file the First Amended Complaint (Exhibit 2), which has already been electronically filed with the clerk and is Docket #2. Plaintiffs are uncertain whether leave is required; if the Court strikes the Complaint and orders that the First Amended Complaint be substituted for the Complaint, then it would seem this motion is not needed.

This motion is brought pursuant to FRCP (a)(2): “In all other cases, a party may amend its pleading on with the opposing party’s written consent *or the court’s leave*. The court should freely give leave when justice so requires.” (Emphasis added.) It is also brought pursuant to LR 7.1 and 15.1 and ECF R14.

RELIEF REQUESTED

Plaintiffs request an order (1) striking the Complaint (docket #1) and (2) granting leave for plaintiffs to file their First Amended Complaint (docket #2) and substituting it for the Complaint.

Respectfully submitted,

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/s/ Marshall Lasser
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Dated: March 6, 2015

CERTIFICATE OF SERVICE

I certify that on March 6, 2015, I electronically filed the forgoing paper with the Clerk of the Court using the ECF system. I have not sent notification of such filing to anyone.

/s/ Kathy S. Maretti
marettiks@yahoo.com

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